

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Jonathan E. & Blair M. Swartz,
Petitioners-Appellants,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-77-1508
Parcel No. 312/03200-700-053

On October 18, 2010, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioners-Appellants, Jonathan E. and Blair M. Swartz, requested a hearing and submitted evidence in support of their petition. They were represented by Attorney Douglas A. Fulton of Brick Gentry P.C., West Des Moines, Iowa. The Board of Review designated Assistant County Attorney David Hibbard as its legal representative. It also submitted documentary evidence in support of its decision. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Jonathan and Blair Swartz, owners of property located at 4102 Belair Drive, Urbandale, Iowa, appeal from the Polk County Board of Review decision reassessing their property. According to the property record card, the subject property consists of a two-story dwelling having 1438 square feet of main level living area and 1318 square feet of upper level living area, for a total living area of 2756 square feet. It has a 1370 square-foot, unfinished basement and a 753 square-foot, attached garage. The property is also improved by a 90 square-foot, open porch and a 168 square-foot deck. The improvements were built in 2004. The dwelling has a 1-10 quality grade classification and is in normal condition. The improvements are situated on a 0.512 acre site.

The real estate was classified as residential on the initial assessment of January 1, 2009, and valued at \$358,500, representing \$58,600 in land value and \$299,900 in improvement value.

The Swartzes protested to the Board of Review on the ground the property is assessed for more than authorized by law under Iowa Code section 441.37(1)(b) claiming \$286,200 was its actual value and fair assessment. The Board of Review granted the protest, in part, stating, "The assessed value of this property was changed because the market data did not support the assessment." The assessment was reduced to \$330,400, representing \$58,600 in land value and \$271,800 in dwelling value.

The Swartzes filed their appeal with this Board and urged the same ground and also indicated they sought a reduction in the assessment to \$286,200. The Swartzes seek an assessment of \$103.85 per square foot, and their property is currently assessed at \$119.88 per square foot.

Blair Swartz testified they purchased the property in July 2008 for \$265,000 in an unfinished "as is" state. She testified a financing appraisal completed at the time of purchase valued the subject property "as is" for \$265,000; however, this appraisal was not supplied for review. Ms. Swartz reported they had a mortgage line of credit up to \$300,000 to purchase the home and complete the unfinished items. Instead of using the full line of credit, the Swartzes borrowed only the purchase price and paid for the additional completion costs out-of-pocket. These expenses included the purchase and installation of floor coverings, bath tiles, toilets, faucets, bath fixtures, appliances, and a mailbox totaling roughly \$20,000. Ms. Swartz testified all the work was done by contractors and some of the materials were purchased at retail home improvement store pricing. In Ms. Swartz's opinion, the actual purchase price plus the cost to finish the improvements is the fair market value of the property.

Although we consider the sale price in a normal sales transaction as an indication of fair market value, it does not conclusively establish it. § 441.21(1)(b). We are mindful of the fact that foreclosure sales are not considered normal transactions and require either exclusion or adequate adjustments to be

used as comparative sales. However, we decline to adopt the Board of Review's position that all sales of properties with unfinished improvements are "distress sales."¹ The prior sale from the developer-builder, Oaks Development Company, to Rebecca, LC, was an abnormal sale because of foreclosure circumstances and/or the fact that it was discounted purchase because multiple properties were purchased at the same time. But Swartz's testimony suggests when they purchased the property it was listed in the marketplace through a Multiple List Service broker for a period of time and was not itself a foreclosure sale. For these reasons, the Swartzes' purchase price will be considered in arriving at the subject property's assessment value.

Cris Swaim of Swaim Appraisal Service, Inc., West Des Moines, completed an appraisal of the property and testified on behalf of the Board of Review. He indicated in the appraisal that the subject was originally listed for sale in 2007 for \$356,900 then dropped to \$346,000 before going into foreclosure.² His report states the sale price of \$265,000 is not indicative of its market value because it was a distress sale.³ It also indicates Swaim's information sources were the property owners and public records. When questioned, Swaim acknowledged he did not independently seek any information to verify whether the purchase was indeed a foreclosure property or distress sale, but instead relied on his own general knowledge about the developers of the property. Swaim did not know any information on the seller, Rebecca, LC, and does not know if the Swartzes' sale was an arms-length transaction or not. The chain of title indicates that the Oaks Development Company sold the property to Rebecca, LC, and subsequently the LC sold it to the Swartzes.

¹ The Department of Revenue states one example of a distress sale is a tax sale. IOWA DEP'T OF REVENUE, DUTIES AND RESPONSIBILITIES OF ASSESSORS 16 (2008). Furthermore, in *Koch v. Kosticheck*, 409 N.W.2d 680, 684 (Iowa 1987) the Supreme Court noted "[t]he foreclosure sale has previously been recognized as a distress sale at which the seller can expect to receive a reduced price." The term generally refers to the selling conditions, not the condition of the property.

² We presume the listing price was set by Oaks Development Company who owned it at the time, we also note the original list price and subsequent lower price reflected finished homes, dissimilar from the Swartzes' purchase in "as is" condition.

³ We note the Swartzes referred to the subject as a "distressed property," referring to its incomplete condition, not a condition of its sale.

Swaim completed an interior inspection of the property on September 28, 2009. He describes the subject as a two-story in good condition and built with quality materials which conform well to other two-story homes in the area.

Swaim developed the sales approach to valuation. He identified three comparable properties similar to the subject property that were all re-sales as opposed to new construction. He adjusted for site size, gross living area, basement size and finish, walkout feature, and other amenities. Unadjusted sale prices ranged from \$299,900 to \$325,375, or \$99.24 to \$128.11 per square foot with a median of \$124.38 per square foot. Adjusted sale prices ranged from \$306,500 to \$310,175. The subject property is assessed at \$119.88 per square foot which is within the unadjusted sale price range and below the median. Swaim estimates a value of \$308,000 by the sales approach as of January 1, 2009.

Swaim states Swartzes' neighborhood of Urbandale consists of numerous residential developments built within the past five to ten years. Within his search parameters of one-and-one-half story and two-story homes in the neighborhood priced between \$280,000 and \$380,000 there were seventy-nine sales with a median sale price of \$314,000. His range was approximately \$50,000 less than the assessed value to \$50,000 more than the assessed value. We question Swaim's method of setting a range of value based on the assessment. This is not typical in appraisal practice and suggests the purpose of the appraisal was to support the assessed value rather than to do an independent market value analysis of the subject property. The record indicates that there were an additional five 2008 sales of one and one-half story and two story homes in the immediate neighborhood of the subject property that sold for less than \$280,000 and were excluded by the search parameters. Also, it resulted in the search area to be expanded to competing developments 2.4 to 3.4 miles away from the subject property for two of the three sales used by Swaim.

Reviewing all the evidence, we find the preponderance of the evidence supports the Swartzes' contention their property is assessed for more than authorized by law. We considered the purchase

price of the property and the Swaim appraisal to be credible evidence supporting a lower assessed value. However, given our concerns about the appraiser's search parameters, we give more weight to the Swartzes' purchase price plus the costs of completing the improvements as indicators of a fair assessment of the subject property on the January 1, 2009, assessment date.

Conclusion of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are also to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a). In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct

value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). In *Riley v. Iowa City Bd. of Review*, 549 N.W.2d 289, 290 (Iowa 1996), the Court determined that, “It is clear from the wording of Iowa Code section 441.21(1)(b) that the sales price of the subject property in a normal sales transaction, just as the sale price of comparable property, is to be considered in arriving at market value but does not conclusively establish that value.” We are mindful of the fact that distress sales are not considered normal transactions and require either exclusion or adequate adjustments to be used as comparative sales. From the evidence, we conclude the sale of the property was a normal arms-length transaction. See Iowa Code §441.21(1)(b). We find a preponderance of the evidence proves the Swartzes’ property is assessed for more than authorized by law. As in *Riley*, we do not assume that the contemporaneous sale price was conclusive as to the property’s market value. *Id.* at 290. We find the purchase price is the most persuasive evidence of the property’s market value at the time of the July 2008 sale. *Id.* This purchase price and the evidence of the additional cost to complete the improvements provide the most credible evidence of the fair market value of the property as of January 1, 2009.

Viewing the evidence as a whole, we determine the preponderance of the evidence supports Swartzes’ claim of over-assessment as of January 1, 2009. Therefore, we modify the Swartzes’ property assessment as determined by the Board of Review. The Appeal Board determines the property assessment value as of January 1, 2009, is \$286,200, representing \$58,600 in land value and \$227,600 in improvement value.

THE APPEAL BOARD ORDERS that the January 1, 2009, assessment as determined by the Polk County Board of Review is modified to \$286,200, representing \$58,600 in land value and \$227,600 in improvement value.

Dated this 19 day of November 2010.

Jacqueline Rypma
Jacqueline Rypma, Presiding Officer

Richard Stradley
Richard Stradley, Board Member

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>11-19</u> , 201 <u>0</u>	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier <input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u>John Campbell</u>